

17 February 1976

SUBJECT : Interagency Group on NSSM 229

1. The interagency group created by NSSM 229 (August 1975) met for the first time today. It was chaired by Bill Hyland, Deputy Assistant to the President for National Security Affairs. Representing the agencies were Bill Blair of State, David Cooke of Defense, Mark Grunewald of Justice, Barry Roth of Buchen's office, Jeanne Davis and Clint Granger of the National Security Council staff and [redacted] of CIA. A number of assistants and other backup people were also present.

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2. It was concluded that a working group of representatives of this group is to be formed, and its first meeting is to be Friday of this week at 1500 hours. We are to notify Jeanne Davis of our member, and she will advise us where the meeting is to be held. The charter of this working group, at least at the initial meeting, is to suggest issues involved in the Executive order. Prior to the Friday meeting, the NSC staff will prepare section headings by way of an outline of what might become a new Executive order. The issues which the working group will bring to Friday's meeting will then be looked at in the light of the Executive order outline for further consideration of the next steps. The charter was essentially vague, however, and I am sure one of the constant problems for the working group will be to have an agreed understanding of what its function is.

3. A central theme to most comments at today's session was that the work of the NSSM 229 group should not serve to invite legislation which might not otherwise be forthcoming or to induce more severe legislation than would otherwise occur. It was generally assumed that legislation in the area of classified information is almost inevitable, but it was suggested that it might not happen in this session. On the other hand, I suggested that the priority interest to which the group's work should be directed is that of providing necessary protection. The objective of preventing over-protection, that is, too much classification or classification for too long, should be only the secondary objective of this study. Bill Blair of State expressed agreement with this, and Jeanne Davis was quite strong in urging that the NSSM group should propose whatever may be necessary

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or desirable. It was indicated that the executive branch has done better in implementing E.O. 11652 and in cutting down on overclassification than is generally realized. It was suggested that the executive branch has not adequately made this known.

4. Nothing in the discussions showed any real interest or knowledge of those matters which caused NSSM 229 to be issued, other than Jeanne Davis' expertise. It continues to appear that the NSSM was originated at the NSC staff level and that senior NSC personnel (Scowcroft and Hyland) are not yet involved in any depth. The significance of this is that there does not appear to be any strongly held, high-level NSC views.

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Associate General Counsel

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MEMORANDUM

SUBJECT: E.O. 11652 Issues for Consideration Under NSSM 229

Issues in E.O. 11652 to be raised with interagency group:

a. Sources and methods information should be freed from those aspects of the Executive Order which put authority in ICRC, which require declassification review upon request or which subject information to the GDS. The approach should be that even the classification aspects of such information should incorporate the above. The thought is that since sources and methods information is subject to protection by the DCI, even if it is also subject to classification and protection under the Executive Order, the decontrol features of E.O. 11652 and ICRC should not be involved.

b. The Order should deal with the problem of derivative authority. The Order should provide for and reflect the fact that a decision to classify the subject matter and area of interest, etc. need be and indeed should be made only once (until reversed or changed). Documents which thereafter include any such information would not involve a new classification decision. For example, a DDO component begins the consideration of a possible new activity or project. At the appropriate stage, a DDO official concludes that the information warrants classification. He makes a decision to that effect. That classification decision thereupon is made, and other Government employees who create documents concerning that project or activity are not making new classification decisions. They are simply concluding that their document includes information which has been classified by an authorized official. The present system whereby personnel all over the Government make numerous classification decisions undoubtedly causes conflicting decisions. What is needed is a legitimization of so-called "derivative" classification authority.

c. ICRC is charged with more supervisory and other duties than it can perform as presently constituted. It needs to be provided with a massive increase of funds and people, or its duties should be reduced to a realistic level. Probably an adequate increase in resources is out of the question. Further, a committee of subordinates authorized and directed to direct certain activities of their own departments, and those of other departments as well, is an administrative absurdity.

d. The requirement for the data index system should be abolished. I believe it is true that the data index has not been unduly burdensome to CIA, since we had an index system in being before the requirement of the Executive Order came about. This is so only because ICRC has acquiesced in Agency accomplishing compliance with the Order by rather minor modifications to our existing index. A different approach by ICRC, that is, if ICRC were to require that we maintain a data index system involving all classified CIA documentation, or any major increase in the number or category of documents handled by the system simply could not be made without a great deal more money and people. Further, it has virtually no E.O. 11652 value.

e. The authority to exempt from the GDS should be separated from the authority to classify at Top Secret, that is, the former authority should be available for all employees authorized to classify at any level.

f. The provision concerning classification abuses should be deleted. It is not clear from the Order what is meant by classification abuses, and ICRC has struggled with this term on several occasions. In any event, the provision appears to contemplate that employees at middle and low levels are deliberately overclassifying in violation of the Order to hide their mistakes, to support a point of view or for other purposes not appropriate under the Order. I think this simply does not take place. If there are deliberate overclassification decisions for those purposes, probably they are made by high level officials and are not readily controllable by this kind of a provision in an Executive order.

g. The Executive Order should require secrecy agreements. The new Executive Order includes a provision to that effect,

but the protections appropriate to E.O. 11652 should not be left to the vagaries of another Executive order.



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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

E.O. 11652 Issues for Consideration Under NSSM 229

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Associate General Counsel

EXTENSION

NO.

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DATE

18 February 1976

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TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

To: CIA Group on NSSM 229

The attached is my writeup of the first meeting of the inter-agency group re NSSM 229, yesterday, and a list of issues under E.O. 11652 for consideration as CIA points to raise and push with the interagency group.

The purpose of our CIA group meeting, at 1500 hours, Thursday, 19 February, is to bring everybody up to date and to prepare for the interagency meeting on Friday.

Associate General Counsel

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